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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/812,148

03/29/2004

Gary W. James

METZ 2 00011

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04/21/2008

FAY SHARPE LLP

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EXAMINER

KUHN, MART K

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

04/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/812,148	Applicant(s) JAMES ET AL.	
	Examiner Mart K. Kuhn	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,9 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,9 and 14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the support members formed in the base wall and removable shelf, and the flanges formed in the support wall (claims 15, 16) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 5 is objected to because of the following informalities: in line 1, after the word "wherein", insert --the--; in line 2, the word "has" should be --have--. Appropriate correction is required.

Claim Rejections—35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 15 and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claimed “fourth support member formed in the base wall” and “removable shelf further compris[ing] a fifth support member” are not shown in the drawings or described in the specification. Similarly, the claimed “flange extending from a planar surface of the support wall” is not shown or described. These limitations are thus considered new matter. See the related drawing objection above.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 5, 6, 9 and 14–16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Claim 1 recites the limitation “a removable shelf including a planar surface” in line 23, and “the removable shelf further including ... a planar surface” in lines 37–38. It is unclear whether the two recitations of “a planar surface” are meant to denote separate surfaces or the same surface of the shelf. See MPEP § 2173.05(o). Similarly, claim 16 recites “a planar surface of

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the support wall" where an identical recitation already exists in claim 15. For the purposes of this examination, the removable shelf and support wall are each considered as having only a single planar surface.

Claim Rejections—35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 6, 9 and 14–16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans, US patent 3,168,365, in view of Snoke et al., US patent 6,152,552, and Gutner, US patent 4,189,796. Evans discloses a cabinet (10, 10') with opposite first (12) and second (13) side walls interconnected by a rear third wall (11, 11'); a base wall (not shown but considered to be inherent in a cabinet structure); a removable shelf (20) with a planar surface (25); and aligned support members (17') punched out of and extending from the rear third wall such that openings are formed adjacent thereto (see Fig. 12; col. 3, lines 24–30), the support members including first legs extending perpendicular to the wall and second legs extending perpendicular to the first legs and spaced parallel to the wall; the flanges of the shelf being received between the walls of the cabinet and the legs of the support members to secure the shelf in place.

Evans discloses support members punched out of and extending from the rear third wall, but not an aligned first support member punched out of and extending from the first side wall of the cabinet. Snoke et al. teach a cabinet (10) having wall components (26) forming a rear wall and opposing side walls (see Fig. 2; col. 3, lines 9–11); a base wall (28); and a removable shelf (30) with a planar surface and flanges (76) with openings (40) therein; the side and rear walls of

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the cabinet having aligned support members (44) punched out and extending therefrom such that openings are formed adjacent thereto (see Figs. 15, 16); the flanges of the shelf being received between the walls of the cabinet and legs of the support members to secure the shelf in place. Evans thus teaches a cabinet upon which the claimed side wall support members can be seen as an improvement; and the prior art in Snoke et al. teaches a comparable cabinet that was improved in the same way as claimed, *i.e.*, having support members punched out of both side and rear walls to support a shelf. One of ordinary skill in the art could have applied the known improvement of Snoke et al. in the same way to the cabinet of Evans with predictable results: a cabinet with support members punched out of the rear wall and the side walls.

Evans discloses L-shaped support members engaging flanges, and Snoke et al. teach support members in the side and rear walls of the cabinet; but Evans and Snoke et al. do not teach support members with straight first and second legs, or dimples received in openings in the shelf flanges. Gutner teaches a support structure (see Figs. 2–4) having an L-shaped support member (18) engaging a flange (13); the support member being punched out of and extending from a plate (14) such that an opening (19) is formed through the plate; the support member including a straight first leg perpendicular to the plate and a straight second leg perpendicular to the first leg and spaced parallel to the plate (see Fig. 4), the second leg including a substantially hemispherical dimple (20) extending towards the plate opening; and the flange including a circular opening (21) dimensioned to receive the support member dimple. The cabinet of Evans, modified as above by Snoke et al., differs from the claimed cabinet only by the substitution of one L-shaped support member and corresponding flange for another; and Gutner shows that the claimed straight-legged support member, dimple, and flange opening were known in the prior art along with their functions. One of ordinary skill in the art, therefore, could

have substituted the known flange and dimpled L-shaped support member of Gutner for the flange and curved L-shaped support member of Evans, with predictable results.

Regarding claims 6, 9 and 14, the support members of Evans and Gutner are considered lances, Evans teaches a cabinet fabricated from metal (col. 2, lines 11–13), and Evans further teaches a support wall (45) disposed between the first side wall and the second side wall in a first direction and between the removable shelf and the base wall in a second direction.

Regarding claims 15 and 16, Evans does not specify how the support wall is connected to the base wall and the removable shelf, stating only that its upper end “is adapted to engage against the underside of the shelf” (col. 3, lines 15–16). However, Evans teaches the use of support members (17, 17', 47) and flanges to secure different components (such as 20 and 48). It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to modify the cabinet of Evans, already modified as above to include additional support members and dimples in the support members, by providing further support members in the base wall and removable shelf to connect the support wall thereto, as this would ease manufacture by allowing consistent use of such a connection throughout the cabinet.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans, Snoke et al., and Gutner as applied to claim 1 above, and further in view of Young, US patent 3,677,202. Evans, Snoke et al., and Gutner teach a cabinet substantially as claimed, but do not teach rounded upper edges on the support members. Young teaches a shelf support structure (see Figs. 2, 4) having support members (25) punched out of and extending from walls (23), the support members having rounded upper edges (35; see Fig. 4) to ease assembly of the system (col. 2, lines 42–45). It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to modify the cabinet of Evans, already modified as above, by provid-

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ing the support members with rounded upper edges, as taught by Young, for the purpose of facilitating assembly of the cabinet.

Response to Arguments

11. Applicant's arguments with respect to claim 1, rejected as obvious over Evans in view of Wise and Vargo, have been considered, but the arguments against Wise and Vargo are moot in view of the new ground(s) of rejection set forth above.

12. Applicant's remaining arguments have been fully considered but they are not persuasive. It is first noted that Evans does in fact disclose support members formed directly in the walls of the cabinet (see Fig. 12 and col. 3, lines 24–30). Furthermore, the addition of side wall support members would not necessitate the removal of Evans's clips 35 and the destruction of the reference, as Applicant suggests (Remarks at page 6, last full paragraph). The support members, even as modified by Gutner, would provide a friction fit for the shelf, whereas the clips 35 provide a positive engagement. Additional support members would not eliminate the utility of the clips.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mart K. Kuhn whose telephone number is (571)272-8926. The examiner can normally be reached on M–F, 8:30am–5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Janet M. Wilkens/
Primary Examiner, Art Unit 3637

/MKK/
Examiner, Art Unit 3637
16 April 2008